IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 18715 of 2005
With
SPECIAL CIVIL APPLICATION No. 23918 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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HARSHADBHAI KANUBHAI PATEL - Petitioner(s)

Versus

STATE OF GUJARAT & 1 - Respondent(s)

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Appearance :
MR DC DAVE for Petitioner(s) : 1,
MR HM PRACHCHHAK ASST GOVERNMENT PLEADER for Respondent(s) : 1,
RULE SERVED for Respondent(s) : 1 - 2.
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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 15/12/2005

COMMON ORAL JUDGMENT

1. As such, Special Civil Application No.23918 of 2005 is one page petition filed by the petitioner challenging the order passed by the Deputy Collector, Stamp Duty Valuation, Anand dated

2.6.2003 with respect to the Document No.610 / 95 which is already challenged by him by way of Special Civil Application No.18715 of 2005 challenging the order with respect to the Document No.611 / 95 also. Therefore, Special Civil Application No.23918 of 2005 be confined and treated to have challenged the order dated 2.6.2003 with regard to Document No.610 of 1995.

2. Rule. So far as Special Civil Applicaton No.23918 of 2005 is concerned, Shri H.M.Prachchhak, learned AGP waives service of rule on behalf of the respondent authorities. With the consent of the learned advocates for the parties, the said special civil application is taken up for final hearing along with Special Civil Application No.18715 of 2005.

3. So far as Special Civil Application No.23918 of 2005 is concerned, the petitioner has challenged the legality and validity of the order passed by the Deputy Collector, Stamp Duty Valuation, Anand

dated 2.6.2003 passed under Section-32-A of the Bombay Stamp Act by which the petitioner is directed to pay deficit stamp duty of Rs.1,17,740/- plus Rs.250/- by way of penalty, in all Rs.1,17,990/- with respect to the Document No.610 of 1995 presented before the Sub-Registrar, Khambhat.

4.So far as Special Civil Application No.18715 of 2005 is concerned, the petitioner has challenged the legality and validity of the order passed by the Deputy Collector, Stamp Duty Valuation, Anand dated 2.6.2003 passed under Section-32-A of the Bombay Stamp Act by which the petitioner is directed to pay the deficit stamp duty of Rs.99,261/- plus Rs.250/- by way of penalty in all Rs.99,511/- with respect to the document No.611 / 95 registered before the Sub-Registrar, Khambhat.

5.Shri D.C.Dave, learned advocate appearing on behalf of the petitioners has vehemently submitted that the impugned orders dated 2.6.2003 are contrary to

the provisions of Rule-4 of the Bombay Stamp (Determination of Market Value of Property) Rules; 1984 and as such, no particulars and/or reasons are given by the authority for determining the valuation of the property in question at Rs.10,41,615/- so far as the Document No.610/95 is concerned and Rs.8,53,557/- in respect of the Document No.611 / 95. It is also further submitted that as such the impugned order came to be passed on the basis of the notice under Rule-4 of Rules; 1984 by which the petitioner was called upon to prove that the valuation of the property/land in question is at Rs.1,21,500/- in respect of Document No.610/95 and Rs.78,000/- so far as Document No.611/95 is concerned. He has relied upon the judgment of this Court in case of *Budhabhai Merabhai Bharwad V. State of Gujarat reported* in (2005) 8 GHJ Page-374 : 2005 (2) GLR 1792. The learned advocate for the petitioner has also placed reliance on another decision of the learned Single Judge of this Court rendered in case of PRADHYUMANBHAI MOHANLAL PATEL V. STATE OF GUJARAT & ORS. Reported in 2003 (1) GLR 454, wherein it is

held that when the Chief Revenue and Controlling Authority passed an order in cyclostyled form wherein some gaps were filled up and few sentences were added, it is an order passed without proper application of mind and not speaking order and the same cannot be sustained in eye of law.

6.Shri H.M.Prachchhak, learned AGP appearing on behalf of the respondents is not in a position to dispute that in the impugned orders dated 2.6.2003 no particulars are given that on what basis the Deputy Collector has come to the conclusion that the valuation of the property in question is at Rs.10,41,615/- so far as the Document No.610/95 is concerned and Rs.8,53,557/- in respect of the Document No.611 / 95. He is also not in a position to dispute that as such the controversy in question is directly covered by the judgment of this Court in case of ***Budhabhai Merabhai Bharwad and another decision PRADHYUMANBHAI MOHANLAL PATEL V. STATE OF GUJARAT & ORS.***(supra). However, he has submitted that the valuation of the property in question is fixed on the basis of the Jantri.

7.Heard the learned advocates appearing on behalf of the parties.

8.I have gone through the order passed by the Deputy Collector. In the impugned order, no particulars and/or basis have been mentioned by the Deputy Collector that on what basis, he has come to the conclusion that the valuation of the property in question is at Rs.10,41,615/- so far as the Document No.610/95 is concerned and Rs.8,53,557/- in respect of the Document No.611 / 95. Nothing is on record to suggest that the petitioner has been served with any material relied upon by the Deputy Collector, if any, for ascertaining and/or fixing the valuation of the property in question at Rs.10,41,615/- so far as the Document No.610/95 is concerned and Rs.8,53,557/- in respect of the Document No.611 / 95. It also prima-facie appears that even the impugned order has been passed on the basis of the notice issued under Rule-4 of the aforesaid Rules and by which the petitioner was called upon to prove that the valuation of the

property is at Rs.1,21,500/- in respect of Document No.610/95 and Rs.78,000/- so far as Document No.611/95 is concerned and not more. This Court has remanded the matter to the Deputy Collector concerned for deciding the same afresh after issuing proper notice under Rule-4 of Rules 1984 and after giving an opportunity to the petitioner and after providing the material upon which the Deputy Collector wants to rely to determine the valuation of the property in question.

9. For the reasons stated above and for the reasons stated in the judgment of this Court in case of BHUDHABHAI MERABHAI BHARWAD and another decision PRADHYUMANBHAI MOHANLAL PATEL V. STATE OF GUJARAT & ORS.(supra), both these petitions are allowed partly. The impugned orders in both these respective petition passed by the Deputy Collector, Stamp Duty Valuation, Anand dated 2.6.2003 are hereby quashed and set aside and the matter is remanded to the Deputy Collector, Stamp Duty Valuation, Anand for deciding the same afresh in accordance with law and on merits and after issuing

proper notice under Rule-4 of the Rules of 1984 and after giving an opportunity to the petitioner and after supplying necessary material to the petitioner upon which the Deputy Collector proposes to rely while determining and/or ascertaining the valuation of the land in question. The said exercise to be done within a period of 6 months from today. It is, however, made clear that if any amount is already paid/deposited by the petitioner pursuant to the respective order passed by the Deputy Collector, Stamp Duty Valuation, Anand dated 2.6.2003, then in that case, the respondents are not required to refund the said amount at this stage and the same would be subject to the ultimate outcome of the proceedings on remand and the said amount be adjusted on the basis of the order that may be passed by the Deputy Collector.

10.Rule, in both the petitions, is made absolute to the aforesaid extent, however, there will be no order as to costs.

Direct Service is permitted.

(M.R.SHAH, J.)

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